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Attorneys for Defendants Tierney, Zito, and Larson

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

SCOTT FRIEDMAN,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

2:18-cv-857-JCM-VCF

**MOTION TO DEFER RULE 26(f)  
CONFERENCE AND SUBMISSION OF  
SCHEDULING ORDER/DISCOVERY  
PLAN**

**EXPEDITED CONSIDERATION  
REQUESTED**

Defendants Gene Tierney, Matthew Zito, and Thayne Larson (hereinafter “FBI agent defendants”), through their undersigned counsel, move this Court for an Order deferring the Rule 26(f) conference and the corresponding submission of a Scheduling Order/Discovery Plan in this action until after the Court has entered its order regarding the Motion to Stay Discovery (dkt. #58).

Expedited consideration is requested for this request because of the imminent requirement imposed by Local Rule 26-1 to proceed with the scheduling of a Rule 26(f) scheduling conference and submission of a Scheduling Order/Discovery Plan, notwithstanding the pending Motion to Stay Discovery.

1 The grounds for the requested order deferring the Rule 26(f) conference and the submission of a  
2 Scheduling Order/Discovery Plan are as follows:

3 1. The three FBI agent defendants are sued herein under a so-called “Bivens” theory of liability.  
4 Through their joint motion to dismiss (dkt. #55), the FBI agent defendants seek dismissal of all such  
5 claims as incompatible with recent Supreme Court precedent that expresses strong disapproval of  
6 extending “Bivens” implied remedies into new contexts such as the context presented in this case. *See*  
7 *Ziglar v. Abassi*, 137 S.Ct. 1843 (2017).

8 2. Several other defendants sued herein also have filed their respective motions for dismissal  
9 of the claims alleged against them. *See* Motions to Dismiss (dkt. ##39, 54, and 56).

10 3. The three FBI agent defendants have filed their Motion to Stay Discovery (dkt. #58), seeking  
11 a stay of discovery until after the Court has addressed the qualified immunity and other defenses raised  
12 in their motion to dismiss – defenses which the Supreme Court has plainly stated should be adjudicated  
13 before any discovery is permitted. Briefing has not been completed on the Motion to Stay Discovery.

14 4. In an ordinary civil action, a Scheduling Order/Discovery Plan would be submitted for the  
15 Court’s approval in accordance with Local Rule 26-1(e) after the parties have participated in a Rule 26(f)  
16 scheduling conference. Plaintiff’s counsel has initiated communication with all counsel to schedule the  
17 Rule 26(f) scheduling conference and to discuss the preparation of a Scheduling Order/Discovery Plan.

18 5. The “ordinary” case management protocol is not appropriate in this action, as discussed in  
19 the pending Motion to Stay Discovery (dkt. #58).

20 6. The current motion seeks to defer the Rule 26(f) scheduling conference and the submission  
21 of a Scheduling Order/Discovery Plan until after the Court has entered an order regarding the pending  
22 Motion to Stay Discovery (dkt. #58). Until a decision is made on the Motion to Stay Discovery, it would  
23 be premature and inefficient to proceed with a multi-counsel time-consuming discussion regarding an  
24 appropriate discovery regimen. The cost and efficiency of those discovery-related discussions and related

1 activities would be better managed after a decision is made by the Court on the pending Motion to Stay  
2 Discovery.

3 Based on the foregoing, the FBI agent defendants request the entry of an order deferring  
4 the Rule 26(f) scheduling conference and the submission of a Scheduling Order/Discovery Plan until  
5 after the Court has entered an order regarding the pending Motion to Stay Discovery (dkt. #58).

6 Respectfully submitted,

7 DAYLE ELIESON  
8 United States Attorney

9 /s/ Greg Addington  
10 GREG ADDINGTON  
11 Assistant United States Attorney

12 IT IS SO ORDERED

13 August 21  
14 Date: \_\_\_\_\_, 2018

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16 \_\_\_\_\_  
17 UNITED STATES MAGISTRATE JUDGE  
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CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing **MOTION TO DEFER RULE 26(f) CONFERENCE AND SUBMISSION OF SCHEDULING ORDER/DISCOVERY PLAN – EXPEDITED CONSIDERATION REQUESTED** was made through the Court’s CM/ECF electronic filing and notification system on all counsel of record as follows:

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Dated: August 21, 2018.

/s/ Greg Addington  
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